IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No. 24 of 1996
Date of decision 10 .7 .2007

The Commissioner of Income Tax, Jalandhar
.. appellant

Versus

Sh.Yash Paul Singh Bhalla Vimpi Resturant .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr.Sanjiv Bansal, Advocate for the appellant

M.M.Kumar, J.

This order shall dispose of ITR No.24 and 120 of 1996 as common question of law and facts have been raised. However, the facts are being referred from ITR No.24 of 1996

At the instance of the revenue reference under Section 256(1) of the Income Tax Act, 1961 has been made to this Court by the Income Tax AppellateTribunal which claims to emerge from the order dated 6.12.1990 passed by the Income Tax Appellate Tribunal in ITA Nos. 821, 852 to 858 (ASR) 1998 in respect of assessment years 1980-81 to 1987-88. The following question has been referred treating it to be a substantive question of law for the opinion of this Court:

" Whether on the facts and in the circumstances of the case, the ld. ITAT is right in law in dismissing Department's appeals against the order of the DCIT (Appeals) who detected the interest charged under Section 201(1)(a) of the Income tax Act 1961 amounting to Rs. 5487/-, Rs. 4848/-, Rs.4209/-, Rs.3519/-, Rs.2980/-, Rs. 2291/-, Rs. 1651/- and Rs.1012/- for

the Asstt. Years 1980/81 to 1987/88 respectively."

Facts as per the statement of the case are that the assessee is a proprietor of M/s Hotel Vimpi's Resturant and was running its business at Lally Niwas Building, GT Road, Jalandhar. The premises were let out by Smt. Dharmi Devi and Smt. Gurdev Kaur who were NRIs residing in United Kingdom and were being assessed to income tax as such with the Income Tax Officer, Phagwara. They had constituted an attorney Shri Tarsem Singh son of Malkiat Singh, 8A Model Town, Phagwara for looking after the affairs of these ladies and accordingly rent of the afore-said premises during the assessment year was being received by him @ Rs. 1480/-p.m. After receipt of the rent, he used to deposit the same in the bank account maintained by the afore-mentioned ladies being S.B.Account No. 1352 with the Indian Overseas Bank, Lally Niwas, Jalandhar. The assessee/ tenant was required to deduct tax at source at the time of making payment of rent to the attorney as per requirement of Section 195(1) of the Act which he failed. The Assessing Officer accordingly charged interest of Rs. 24,767/- for the assessment years 1980-81 to 1987-88 vide his order dated 1.2.1998 passed under Section 201(1A) of the Act. The order was corrected under Section 154 of the Act on 29.3.1988 and the interest was increased to Rs. 25,997/- . Year-wise details of the interest charged have also been noticed.

The assessee filed appeal before the Dy. CIT (Appeals) who upheld the order of the Assessing officer. On further appeal filed before the Tribunal, the assessee succeeded in persuading the Tribunal and vide its order dated 6.12.1990 the Tribunal set aside the order of the Dy. CIT(A) and restored the matter to his file for fresh adjudication. It further observed that first appellate Authority was required to keep in view provisions of Section

195 read with Section 163(1) of the Act. Consequent upon the order dated 6.12.1990, the Deputy CIT(A) in turn restored the matter back to the Assessing Officer for fresh adjudication directing him to frame the assessment in the light of the decision of the Tribunal. According to the fresh order dated 6.3.1991 passed by the Dy. CIT (A), the order of the Assessing Officer was set aside.

The Assessing Officer then passed fresh order under Section 201(1A) of the Act holding that the assessee had committed default by not deducting the tax at source as envisaged by Section 195(1) of the Act and therefore interest was chargeable as per the provisions of Section 201(1A) of the Act for non deduction of tax at source from the rent paid to the land ladies. It proceeded to calculate the interest. Against the order dated 30.3.1994 passed by the Assessing Officer, the assessee preferred an appeal before the Deputy CIT(A). After considering the contentions raised by both the sides the appeal of the assessee was accepted and the interest levied under Section 201(1A) of the Act was deleted. On further appeal by the Revenue the Tribunal by a common order dated 1.6.1995 passed in ITA Nos. 1008 to 1015 ASR 99 has upheld the view taken by the CIT(A) in his order dated 30.3.1994 and has approved the following observations made by him:

> " 2.3 I have carefully gone through the facts of the case as well as the submissions made by the A.R. and the appellate order mentioned therein. I am inclined to agree with the contention of the assessee. First of all the status of the land ladies has been changed by invoking the provisions of Section 154 vide order dated 28.3.1986 which itself according to me, is wrong, as the

status of the assessee cannot be changed by simply invoking the provisions of Section 154. Reliance is placed on the decision of Hon'ble Delhi High Court in the case of Addl. CIT Delhi v. Motors and General Finance Ltd., 142 ITR 424 wherein it has been clearly pointed out that change of status involved is a debatable point of fact and is not a mistake apparent from the record, which can be rectified u/s 154. Even the said ractification order was passed on 28.3.1988 while the original order levying interest u/s 201(1A) was passed on 1.1.88. Hence, it is clear that if the status of the land ladies during the course of relevant accounting period for all the assessment years involved, was assessed as resident or ordinarily resident by the IT authorities, then during that period the assessee cannot be held to be in default as per Section 195(1) and also following the decision of the Ld. CIT(A) on the same facts and issues in the case of Sr. Manager, Indian Overseas Bank, Jalandhar dated 21.12.90/.1,.1,91, it has been clearly held that the charging of interest u/s 201((1A) from the asstt. Years 1971-72 to 1987-88 was not correct and full relief was allowed to the assessee. Moreover, the Hon'ble ITAT, Amritsar Bench in their order in ITA Nos. 450 to 456(ASR)/1991 upheld the decision of the Ld. CIT(A) vfide order dated 30.9.1991. Even the Reference Application made by the department was also rejected by the Hon'ble ITAT, Amritsar Bench vide their order dated 27.3.1992. In view of the above discussion, I hold that charging of interest u/s 201(1A) for all the asstt. years under

considerations is wrong. The assessee is entitled to full relief amounting to Rs.25,997/- in total from the asstt. Years 1980-81 upto A.Y. 1987-88 respectively."

It is thus obvious that the interest has been deleted which was added by the Assessing Officer in respect of assessment year 1980-81 till 1987-88. The Tribunal has approved the order dated 19.8.2005 (Annexure G) passed by the Deputy CIT(A) who has opined that the proceedings for and from the assessment year 1985-86 to 1987-88 were not valid as upto 1984-85 the proceedings were time barred under Section 231 of the Act and moreover the status of the landladies was sometimes shown as resident and sometime shown as non resident. They were assessed as resident and non resident. It is also obvious that it would not make any difference because the status of the assessee was not that of an agent since the pre amended Section 195 of the Act was to apply. It has also been found that the status of the landladies is resident upto the assessment year 1987-88 and hence full relief was given to the assessee.

We have heard learned counsel for the revenue at some length and find that no opportunity is provided to interfere in the view taken by the Tribunal because it has been concluded that the status of the assessee has sometime been declared as resident and other time as non resident. Moreover, according to the provisions of Section 231 of the Act the period of commencing recovery proceedings upto the assessment year 1985-86 to 1987-88 has been time barred upto assessment 1984-85. The proceedings for and from the assessment year 1985-86 to 1987-88 were not valid for the reason that the status of the land ladies was sometimes shown as resident and other times as non resident. They were assessed as resident and non

resident. It has also come on record of the connected case bearing ITR No.120 of 1996 that the same land ladies were receiving rent from the assessee- Indian Overseas Bank. The assessee Indian Overseas Bank is a tenant in the part of the same property and full relief was given to the assessee Indian Overseas Bank. Moreover, small amount is involved which can be substantiated by making a reference to the table as referred by various orders which is as under:

" **Asstt. Year**	**Amount of intt. In Rs.**
1980-81	5228/-
1981-82	4619/-
1982-83	4010/-
1983-84	3400/-
1984-85	2791/-
1985-86	2182/-
1986-87	1573/-
1987-88	964/-
	24,767/-

For the reasons afore-mentioned, the question of law is decided against the Revenue and in favour of the assessee.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

10.7.2007
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